

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JULIO FERNANDEZ GONZALEZ,

Case No. 2:20-cv-01775-RFB-NJK

Plaintiff.

ORDER

V.

KATHERIN VALDES-GARCIA, *et al.*

Defendants.

I. INTRODUCTION

Before the Court are four motions: Defendant Katherin Valdes Garcia's First MOTION for Summary Judgment, (ECF No. 86), Intervenor Plaintiff Jorge Hernandez Roque's MOTION to Extend Time (First Request), (ECF No. 88), Defendants ESIS, Inc. and Hertz Corporation's MOTION for Summary Judgment, (ECF No. 99), and Plaintiff Julio Fernandez Gonzalez's Counter MOTION for Summary Judgment, (ECF No. 102).

For the foregoing reasons, Defendant Valdes Garcia's First MOTION for Summary Judgment is denied, Intervenor Plaintiff Hernandez Roque's MOTION to Extend Time (First Request) is granted, Defendants ESIS, Inc. and Hertz's MOTION for Summary Judgment is granted, and Plaintiff Fernandez Gonzalez's Counter MOTION for Summary Judgment is denied.

II. PROCEDURAL BACKGROUND

This case arises out of a car accident that happened on November 13, 2018, when Plaintiff Fernandez Gonzalez was driving a car with two passengers, including Intervenor Plaintiff Hernandez Roque. Defendant Valdes Garcia was driving a car she rented from Hertz and her car contacted the rear end of Plaintiff's vehicle. Plaintiff and passengers were injured.

1 On May 15, 2020, Plaintiff filed a Complaint, naming only Defendant Valdes Garcia, in
 2 state court. ECF No. 2. On September 1, 2020, Plaintiff filed a First Amended Complaint (“FAC”)
 3 in state court, adding Defendants ESIS, Inc. and Hertz. *Id.* On September 24, 2020, Defendants
 4 ESIS and Hertz removed this action from state court. *Id.*

5 On October 29, 2020, Intervenor Plaintiff Hernandez Roque filed a Motion to Intervene.
 6 ECF No. 22, and the Court granted the motion on August 31, 2021. ECF No. 63.

7 On October 6, 2021, the Court ordered discovery due by April 28, 2022, and dispositive
 8 motions due by May 28, 2022. ECF No. 72.

9 On May 31, 2022, Defendant Valdes Garcia filed a Motion for Sanctions under Rule 37(c)
 10 against Intervenor Plaintiff Hernandez Roque for untimely disclosure. ECF No. 85. Intervenor
 11 Plaintiff Hernandez Roque responded on June 14, 2022. ECF No. 87. Defendant Valdes Garcia
 12 replied on June 21, 2022. ECF No. 89. On July 12, 2022, the Court denied Defendant Valdes
 13 Garcia’s Motion for Sanctions. ECF No. 93.

14 On May 31, 2022, Defendant Valdes Garcia also filed a Motion for Summary Judgment
 15 against Intervenor Plaintiff Hernandez Roque’s claims. ECF No. 86. Intervenor Plaintiff
 16 Hernandez-Roque responded on June 28, 2022. ECF No. 91.¹ Defendant Valdes Garcia replied on
 17 July 12, 2022. ECF No. 94.²

18 On July 18, 2022, the Court ordered discovery to conclude by September 30, 2022, and for
 19 any dispositive motions to be filed by October 28, 2022. ECF No. 96.

20 On October 10, 2022, Defendants ESIS, Inc. and Hertz filed the instant Motion for
 21 Summary Judgment. ECF No. 99. Plaintiff Fernandez Gonzalez filed a Response on October 28,
 22 2022. ECF No. 101. On November 15, 2022, Defendants ESIS, Inc. and Hertz filed a Reply. ECF
 23 No. 104.

24 On October 28, 2022, Plaintiff Fernandez Gonzalez filed the instant Counter Motion for
 25 _____

26 ¹ On June 21, 2022, Intervenor Plaintiff Hernandez Roque filed the instant Motion to Extend Time to file a
 27 response to Defendant Valdes-Garcia’s Motion for Summary Judgment. ECF No. 88.

28 ² On October 11, 2022, counsel for Intervenor Plaintiff Jorge Hernandez Roque filed a Motion to Withdraw
 29 as Attorney. ECF No. 100. On November 2, 2022, the Court granted the motion. ECF No. 103. Intervenor Plaintiff
 30 Hernandez Roque was ordered to file either a notice of intent to proceed pro se or a notice of appearance by new
 31 counsel by November 18, 2022. *Id.*

1 Summary Judgment. ECF No. 102. Defendants ESIS, Inc. and Hertz filed a Response on
 2 November 18, 2022. ECF No. 105. Plaintiff Fernandez Gonzalez filed a Reply on December 2,
 3 2022. ECF No. 108.

4 This Order follows.
 5

6 **III. DISCUSSION**

7 The Court first addresses Defendant Valdes Garcia's motion for summary judgment, ECF
 8 No. 86, then it addresses Defendant ESIS, Inc. and Hertz and Plaintiff Fernandez Gonzalez's cross
 9 motions for summary judgment, ECF Nos. 99, 102.

10 **a. Legal Standard**

11 Summary judgment is appropriate when the pleadings, depositions, answers to
 12 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no
 13 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
 14 Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The substantive
 15 law governing a matter determines which facts are material to a case. *Anderson v. Liberty Lobby*,
 16 477 U.S. 242, 248 (1986). When considering the propriety of summary judgment, the court views
 17 all facts and draws all inferences in the light most favorable to the nonmoving party. *Gonzalez v.*
 18 *City of Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the
 19 nonmoving party "must do more than simply show that there is some metaphysical doubt as to the
 20 material facts Where the record taken as a whole could not lead a rational trier of fact to find
 21 for the nonmoving party, there is no genuine issue for trial." *Scott v. Harris*, 550 U.S. 372, 380
 22 (2007) (alteration in original) (internal quotation marks omitted).

23 It is improper for the Court to resolve genuine factual disputes or make credibility
 24 determinations at the summary judgment stage. *Zetwick v. County of Yolo*, 850 F.3d 436, 441
 25 (9th Cir. 2017) (citations omitted).

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b. First MOTION for Summary Judgment, ECF No. 86

i. Factual Background

1. Undisputed Facts

The Court granted Intervenor Plaintiff's Motion to Intervene on August 31, 2021. The Court's October 6, 2021 Scheduling Order imposed the following deadlines: The deadline for Federal Rule of Civil Procedure 26(a)(1) initial disclosures was October 15, 2021. The deadline for Rule 26(a)(2) initial-expert disclosures was February 27, 2022. The deadline for Rule 26(a)(2) rebuttal-expert disclosures was March 29, 2022. Finally, the discovery cutoff date was April 28, 2022.

Intervenor Plaintiff served his expert disclosures on Monday, February 28, 2022. Intervenor Plaintiff served his initial disclosures on March 16, 2022. Intervenor Plaintiff served a supplemental expert disclosure on June 28, 2022.

2. Disputed Facts

The parties dispute the following facts: whether the February 28, 2022 expert disclosures were timely; whether the March 16, 2022 initial disclosures were timely; and whether the June 28, 2022 supplemental expert disclosure were timely and sufficient.

ii. Analysis

Defendant Valdes Garcia's Motion for Summary Judgment contends that Intervenor Plaintiff's failure to timely disclose has prejudiced Defendant Valdes Garcia's ability to defend against Intervenor Plaintiff's negligence claim against her. Intervenor Plaintiff provides the following responses. On the issue of the expert disclosures, Defendant alleges that Intervenor Plaintiff submitted his expert disclosures late; however, February 27, 2022, fell on a Sunday, and by rule, the due date became February 28, 2022. On the issue of the initial disclosures, because of change in counsel in December 2021, Intervenor Plaintiff's counsel believed that initial disclosures had already been served by prior counsel. Defendant Valdes Garcia's counsel did not reach out to meet and confer about the unserved and or missing initial disclosures.

1. The Motion for Sanctions

Defendant Valdes Garcia's Motion for Summary Judgment is premised on similar facts

1 and arguments as her Motion for Sanctions, which also concerns Intervenor Plaintiff's failure to
2 timely serve both his initial and expert disclosures on Defendant Valdes Garcia. In fact, according
3 to the Motion for Summary Judgment, if the Court were to grant Defendant Valdes Garcia's
4 Motion for Sanctions, brought pursuant to Federal Rule of Civil Procedure Rule 37(c), and
5 excluded Intervenor Plaintiff's untimely witnesses and documents, the Court should grant
6 summary judgment against Intervenor Plaintiff's negligence claim. This is because without this
7 evidence, Intervenor Plaintiff does not have a basis to prove causation as to his injuries sustained
8 in the car accident and, in turn, would not have evidence to prove any damages caused by the
9 accident.

On July 12, 2022, Magistrate Judge Nancy J. Koppe declined to grant Defendant Valdes-Garcia’s Motion for Sanctions. ECF No. 93. The Magistrate Judge found that Intervenor Plaintiff indeed failed to timely serve his initial disclosures, but not his expert disclosures. The Magistrate Judge concluded, however, that Intervenor Plaintiff’s untimely disclosures were harmless and that any exclusion was unwarranted. After denying Defendant Valdes Garcia’s Motion for Sanctions against Intervenor Plaintiff for his failure to disclose expert witnesses without prejudice, as it was inadequately briefed, the Magistrate Judge allowed Defendant Valdes Garcia to refile a renewed request by July 25, 2022. Defendant Valdes Garcia did not file a renewed motion.

18 That same day, Defendant Valdes Garcia's Reply acknowledged the Magistrate Judge's
19 Order, and stated she was assessing how and whether she would respond to that the Order,
20 including whether to bring a motion to reconsider under Local "Rule IB 3-1 and/or a renewed
21 motion regarding Intervenor's expert disclosures Should either or both of those motions, if
22 brought, be decided in Defendant's favor, Defendant ask[ed] that the Court consider the outcome
23 of those motions and the substantive arguments therein regarding harmlessness and prejudice when
24 ruling on the Motion for Summary Judgment." Defendant Valdes Garcia filed neither.

2. The Merits

In federal court, litigants must disclose to the opposing party the likely location of discoverable information, documents supporting the litigants' claims or defenses, a computation of damages, and copies of insurance information without awaiting a discovery request. Fed. R.

1 Civ. P. 26(a)(1)(A)(i)–(iv). Rule 37(c)(1) “gives teeth” to the disclosure requirements of Rule 26
 2 “by forbidding the use at trial of any information required to be disclosed by Rule 26(a) or (e) that
 3 is not properly disclosed.” Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106
 4 (9th Cir. 2001).³

5 “Two express exceptions ameliorate the harshness of Rule 37(c)(1): The information may
 6 be introduced if the parties’ failure to disclose the required information is substantially justified or
 7 harmless.” Id. Absent a showing by the party facing sanction that either of the two exceptions
 8 apply, Rule 37 is “a strong inducement for disclosure of material.” Hoffman v. Constr. Protective
 9 Servs., Inc., 541 F.3d 1175, 1180 (9th Cir. 2008) (quoting Yeti, 259 F.3d at 1106). Where a
 10 “sanction amount[s] to a dismissal of a claim, [a] district court [is] required to consider whether
 11 the claimed noncompliance involved willfulness, fault, or bad faith . . . and also to consider the
 12 availability of lesser sanctions” as part of the harmlessness inquiry required under Rule 37(c)(1).
 13 R&R Sails, Inc. v. Ins. Co. of Pa., 673 F.3d 1240, 1247 n.1 (9th Cir. 2012). “Even under R&R
 14 Sails, it is within the discretion of the district court whether to grant summary judgment in favor
 15 of a defendant when: (1) the plaintiff has failed to comply with Rule 26; (2) the Rule 37 sanction
 16 precludes the plaintiff from proving an essential element of its claim; and (3) the court has made
 17 the requisite findings of harm and lack of justification.” Universal Sec. & Fire, Inc. v. Alpha Alarm
 18 & Audio, Inc., No. 17-CV-00844, 2021 WL 5826436, at *4 (E.D. Cal. Dec. 8, 2021) (citing Merch.
 19 v. Corizon Health, Inc., 993 F.3d 733, 741-42 (9th Cir. 2021)).

20 The Court finds that Intervenor Plaintiff Hernandez Roque timely served his expert
 21 disclosures,⁴ although he did not timely serve his initial disclosures. Accordingly, the questions
 22 are now whether Intervenor Plaintiff’s failure to timely serve his initial disclosures and whether
 23 his supplemental expert discovery both warrant prohibiting him from using the information or
 24 witnesses provided by those disclosures to prove his negligence claim against Defendant Valdes

25
 26 ³ The Court notes that the Ninth Circuit has clarified that Rule 37(c) does not contain a meet-and-confer
 27 requirement. Hoffman v. Construction Protective Services, Inc., 541 F.3d 1175, 1179 (9th Cir. 2008). Further, motions
 28 for sanctions are not “motions relating to discovery.” Id.

⁴ Even though initial expert disclosures were due February 27, 2022, that date undisputedly fell on a Sunday,
 and therefore pursuant to Federal Rule of Civil Procedure 6(a)(2)(C), Intervenor Plaintiff’s February 28, 2022 initial
 expert disclosure was timely.

1 Garcia.

2 The Court concludes that they do not. As the Magistrate Judge concluded, Defendant
 3 Valdes Garcia does not dispute that she already had access to the information that was untimely
 4 disclosed. Separately, even if the supplemental expert discovery was insufficient to supplement
 5 the initial February 28, 2022 disclosures, Defendant Valdes Garcia does not explain what made
 6 them insufficient. Further, while Defendant Valdes Garcia is not required to meet and confer about
 7 the Rule 37(c) sanctions, nothing in the record suggests that she attempted to communicate with
 8 Intervenor Plaintiff, before or after the October 2021 deadline, including any time before filing her
 9 instant Motion for Summary Judgment, regarding his initial disclosures. Finally, after this motion
 10 was filed, the discovery deadline was extended to September 30, 2022. Therefore, Defendant
 11 Valdes Garcia was given more time to engage in discovery.

12 Accordingly, the Court denies Defendant Valdes Garcia's Motion for Summary Judgment
 13 against Intervenor Plaintiff's claims.

14 **c. Defendant ESIS, Inc. and Hertz's MOTION for Summary Judgment,
 15 ECF No. 99, and Plaintiff Fernandez Gonzalez's Counter MOTION for
 16 Summary Judgment, ECF No. 102**

17 Plaintiff's FAC alleges, as the Third Cause of Action, one breach of contract claim against
 18 Defendants ESIS, Inc. and Hertz. Specifically, the FAC alleges that Defendants ESIS, Inc. and
 19 Hertz materially breached their obligations under the Settlement Agreement by refusing to pay the
 20 \$640,000 settlement amount they agreed to pay under the agreement.

21 On September 20, 2022, the Court ordered Defendants ESIS, Inc. and Hertz to file a Motion
 22 for Summary Judgment on October 11, 2022 on the issue of the bankruptcy court proceeding and
 23 the Court's jurisdiction to decide Plaintiff Fernandez Gonzalez's Third Cause of Action in his
 24 operative complaint. While the Court's September 20, 2022 Order directed Defendants ESIS, Inc.
 25 and Hertz to file a motion for summary judgment by October 11, 2022, the dispositive motion
 26 deadline was separately set for October 28, 2022. Accordingly, Plaintiff Fernandez Gonzalez filed
 27 his own motion for summary judgment.

28 For the reasons stated below, the Court grants Defendants ESIS, Inc. and Hertz's motion

1 without prejudice and denies Plaintiff's counter motion without prejudice.

2 **i. Factual Background**

3 **1. Undisputed Facts**

4 In November 2018, Plaintiff was injured in a car accident by Defendant Valdes-Garcia who
 5 caused the accident and was driving a car with an insurance policy purchased from Hertz. On May
 6 22, 2020, Hertz filed for Chapter 11 Bankruptcy. On May 27, 2020, the Bankruptcy Court issued
 7 an Automatic Stay Order. On May 29, 2020, Counsel for ESIS, Inc. and Hertz sent an e-mail to
 8 Plaintiff's counsel and counsel for Diaz and Intervenor Plaintiff Hernandez Roque to advise them
 9 that Hertz was tendering the \$1 million in policy limits to the 3 claimants: Plaintiff Fernandez
 10 Gonzalez, Mr. Diaz, and Intervenor Plaintiff Hernandez Roque ("Settlement Agreement"). On
 11 June 25, 2020, the Bankruptcy Court entered an exemption insurance claims from stay. 20-11218-
 12 MFW (Del. Bankruptcy Ct.), ECF No. 584.

13 On August 3, 2020, Plaintiff's counsel advised Defendants' counsel regarding distribution.
 14 On August 13, 2020, Defendants' counsel sent a Settlement and Release Agreement to Plaintiff's
 15 counsel, and Plaintiff executed the Settlement Agreement on August 14, 2020. On September 1,
 16 2020, Plaintiff filed the FAC in Eighth Judicial District Court. ECF No. 2. On September 24, 2020,
 17 Defendants ESIS & Hertz removed the action to federal court. ECF No. 2.

18 On June 10, 2021, the Bankruptcy Court entered a Plan ("Plan") and Confirmation Order
 19 ("Confirmation Order"). ECF No. 66 at 9. On June 30, 2021, the Bankruptcy Court's Automatic
 20 Stay Order was terminated, after Hertz's Chapter 11 Bankruptcy Plan went into effect. See ECF
 21 No. 99 at 2. According to the Bankruptcy Court's Confirmation Order:

22 15. For the avoidance of doubt, pursuant to Bankruptcy Rule
 23 3020(c)(1), the following provisions in the Plan are hereby approved
 24 and will be effective immediately on the Effective Date without
 25 further order or action by the Court, any of the parties to such
 26 release, or any other Entity: (a) Discharge of Claims and termination
 27 of Interests (Article VIII.B); (b) Debtor Releases (Article VIII.C);
 (c) Third-Party Releases (Article VIII.D); (d) Exculpation (Article
 VIII.E); (e) Injunction (Article VIII.F); and (f) Lien Release (Article
 VII.H).

28 ...
 79. This Court shall retain jurisdiction with respect to all matters

arising from or related to the implementation of this Confirmation Order and all matters arising in and under, and related to, these Chapter 11 Cases, as set forth in Article XI of the Plan, or pursuant to section 1142 of the Bankruptcy Code.

ECF No. 99.

Pursuant to Defendant Hertz's Chapter 11 Bankruptcy Plan's (attached as "Exhibit A" to the Confirmation Order) Article V.F. Contracts and Leases Entered into After the Petition Date:⁵

Contracts and leases entered into after the Petition Date by the Debtors, including any Executory Contracts and Unexpired Leases assumed by the Debtors, and not assigned to a non-Debtor Entity, will be performed by the Debtors or the Reorganized Debtors in the ordinary course of its operations. Accordingly, such contracts and leases (including any assumed Executory Contract and Unexpired Leases) shall survive and remain unaffected by entry of the Confirmation Order.

Id. Second, Article VIII.B. Discharge of Claims and Termination of Interests states:

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in a contract, instrument, or other agreement or document executed pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, any Claims for withdrawal liability that relate to services performed by employees of the Debtors before the Effective Date or that arise from a termination of employment, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (i) a Proof of Claim based upon such debt or right is Filed or

⁵ The Petition Date is May 22, 2020.

1 deemed Filed pursuant to section 501 of the Bankruptcy Code; (ii) a
2 Claim or Interest based upon such debt, right, or Interest is Allowed
3 pursuant to section 502 of the Bankruptcy Code; or (iii) the Holder
4 of such a Claim or Interest has voted to accept the Plan. Any default
5 or “event of default” by the Debtors or Affiliates with respect to any
6 Claim or Interest that existed immediately before or on account of
7 the Filing of the Chapter 11 Cases shall be deemed cured (and no
8 longer continuing) as of the Effective Date with respect to a Claim
9 that is Unimpaired by the Plan so long as such cure does not cause
10 such Claim to be Impaired. The Confirmation Order shall be a
11 judicial determination of the discharge of all Claims and Interests
12 subject to the Effective Date occurring.

13 *Id.* Third, Article VIII.E. *Exculpation* provides:

14 Except as otherwise specifically provided in the Plan, no Exculpated
15 Party shall have or incur liability for, and each Exculpated Party is
16 hereby exculpated from, any Cause of Action for any claim related
17 to any act or omission from the Petition Date to the Effective Date
18 in connection with, relating to, or arising out of, the Chapter 11
19 Cases, in whole or in part, the Debtors, DIP Financing, Equity
20 Commitment, Interim Fleet Financing Facility, DFLF Facility,
21 Canada Fleet Financing Facility, HVF II Facility, Donlen Sale,
22 HHN Restructuring, HIL Facility, the Donlen Canada Securitization
23 Facility, the Australian Securitization Facility, the Lombard Vehicle
24 Financing Facility, the formulation, preparation, dissemination,
25 negotiation, of the Plan, the Disclosure Statement, the Plan Support
26 Agreement, the Equity Commitment Documents, any Definitive
27 Document, or any Restructuring Transaction, contract, instrument,
28 release, or other agreement or document created or entered into in
connection with the Plan, the Disclosure Statement, the filing of the
Chapter 11 Cases, the pursuit of Confirmation, the pursuit of
Consummation, the administration and implementation of the Plan,
including the issuance or distribution of Securities pursuant to the
Plan, or the distribution of property under the Plan, or any other
related agreement, except for Claims or Causes of Action arising
from an act or omission that is judicially determined in a Final Order
to have constituted actual fraud, willful misconduct, or gross
negligence, but in all respects, such Exculpated Parties shall be
entitled to the fullest extent permitted by law to reasonably rely upon
the advice of counsel with respect to their duties and responsibilities.
The Exculpated Parties have, and upon Consummation of the Plan,
shall be deemed to have, participated in good faith and in
compliance with the applicable laws with regard to the solicitation
of, and distribution of, consideration pursuant to the Plan and,
therefore, are not, and on account of such distributions shall not be,
liable at any time for the violation of any applicable law, rule, or

1 regulation governing the solicitation of acceptances or rejections of
2 the Plan or such distributions made pursuant to the Plan.

3 ECF No. 99. Fourth, Article VIII.F. Injunction provides:

4 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE
5 PLAN OR FOR DISTRIBUTIONS REQUIRED TO BE PAID OR
6 DELIVERED PURSUANT TO THE PLAN OR THE
7 CONFIRMATION ORDER, ALL ENTITIES THAT HAVE
8 HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS
9 THAT HAVE (1) BEEN RELEASED PURSUANT TO ARTICLE
10 VIII.C OR ARTICLE VIII.D, (2) SHALL BE DISCHARGED
11 PURSUANT TO ARTICLE VIII.B OF THE PLAN, OR (3) ARE
12 SUBJECT TO EXCULPATION PURSUANT TO ARTICLE
13 VIII.E, ARE PERMANENTLY ENJOINED, FROM AND AFTER
14 THE EFFECTIVE DATE, FROM TAKING ANY OF THE
15 FOLLOWING ACTIONS AGAINST, AS APPLICABLE, THE
16 DEBTORS, THE REORGANIZED DEBTORS, THE RELEASED
17 PARTIES, OR THE EXCULPATED PARTIES (TO THE
18 EXTENT OF THE EXCULPATION PROVIDED PURSUANT TO
19 ARTICLE VIII.E WITH RESPECT TO THE EXCULPATED
20 PARTIES): (I) COMMENCING OR CONTINUING IN ANY
21 MANNER ANY ACTION OR OTHER PROCEEDING OF ANY
22 KIND ON ACCOUNT OF OR IN CONNECTION WITH OR
23 WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (II)
24 ENFORCING, ATTACHING, COLLECTING, OR
25 COVERING BY ANY MANNER OR MEANS ANY
26 JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH
27 ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR
28 WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (III)
CREATING, PERFECTING, OR ENFORCING ANY LIEN OR
ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES
OR THE PROPERTY OR THE ESTATES OF SUCH ENTITIES
ON ACCOUNT OF OR IN CONNECTION WITH OR WITH
RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (IV)
ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR
RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION
DUE FROM SUCH ENTITIES OR AGAINST THE PROPERTY
OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION
WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR
INTERESTS UNLESS SUCH ENTITY HAS TIMELY
ASSERTED SUCH SETOFF RIGHT IN A DOCUMENT FILED
WITH THE BANKRUPTCY COURT IN ACCORDANCE WITH
THE TERMS OF THIS PLAN EXPLICITLY PRESERVING
SUCH SETOFF, AND NOTWITHSTANDING AN INDICATION
OF A CLAIM OR INTEREST OR OTHERWISE THAT SUCH
ENTITY ASSERTS, HAS, OR INTENDS TO PRESERVE ANY

1 RIGHT OF SETOFF PURSUANT TO APPLICABLE LAW OR
2 OTHERWISE; AND (V) COMMENCING OR CONTINUING IN
3 ANY MANNER ANY ACTION OR OTHER PROCEEDING OF
4 ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR
5 WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS
6 RELEASED OR SETTLED PURSUANT TO THE PLAN.

7 Id. Finally, Article XI. RETENTION OF JURISDICTION states:

8 Notwithstanding the entry of the Confirmation Order and the
9 occurrence of the Effective Date, on and after the Effective Date, the
10 Bankruptcy Court shall (other than, in the case of disputes related to
11 Reinstated Claims based on events, conduct, or Claims arising after
12 the Effective Date, to the extent necessary to render such Claims
13 Unimpaired) retain jurisdiction over the Chapter 11 Cases and all
14 matters arising out of, or related to, the Chapter 11 Cases and the
15 Plan, including jurisdiction to:
16 ...

- 17 3. resolve any matters related to (i) the assumption, assumption and
18 assignment or rejection of any Executory Contract or Unexpired
19 Lease to which a Debtor is a party or with respect to which a Debtor
20 may be liable in any manner and to hear, determine, and, if
21 necessary, liquidate, any Claims arising therefrom, including
22 Claims related to the rejection of an Executory Contract or
23 Unexpired Lease, Cure Claims, or any other matter related to such
24 Executory Contract or Unexpired Lease; (ii) the Reorganized
25 Debtors amending, modifying, or supplementing, after the
26 Confirmation Date, the schedule of Executory Contracts and
27 Unexpired Leases to be assumed or rejected pursuant to Article V;
28 and (iii) any dispute regarding whether a contract or lease is or was
 executory or unexpired;
29 4. adjudicate controversies, if any, with respect to distributions to
30 Holders of Allowed Claims;
31 5. adjudicate, decide, or resolve any motions, adversary
32 proceedings, contested, or litigated matters, and any other matters,
33 and grant or deny any applications involving a Debtor that may be
34 pending on the Effective Date;
35 6. adjudicate, decide, or resolve any and all matters related to Causes
36 of Action;
37 7. adjudicate, decide, or resolve any and all matters related to section
38 1141 of the Bankruptcy Code

39 Id.

40 **2. Disputed Facts**

41 The parties dispute the following facts: whether Hertz withdrew its Settlement Agreement
42 offer on August 21, 2020; whether ESIS, Inc. is a party to the Confirmation Order and Plan;

whether the Plan’s “Article V.F. Contracts and Leases Entered into After the Petition Date” applies to the Settlement Agreement; and whether the bankruptcy proceedings discharged the Settlement Agreement.

ii. Analysis

The Court grants Defendants' Motion for Summary Judgment.

Defendants argue that the claims against defendants have been discharged pursuant to the Bankruptcy Code and Confirmation Order. Further, the Confirmation Order at paragraph 15 and Articles VIII.B, VIII.F of the Plan enjoin Plaintiffs from litigating claims against ESIS, Inc. and Hertz in this Court. Furthermore, the bankruptcy court retained jurisdiction to construe and enforce the injunction contained in the Plan and Confirmation Order. See Travelers Indem. Co. v. Bailey, 557 U.S. 137, 151 (2009). Thus, any challenge to the Plan must instead be raised in the bankruptcy proceeding.

Plaintiff argues the following. First, the Confirmation has no impact on the Court's jurisdiction over Plaintiff's claims against ESIS, Inc. because ESIS, Inc. was not a party to the subject bankruptcy during the relevant period. Second, "Article V.F. Contracts and Leases Entered into After the Petition Date" of the Plan operates as an exception that applies to both Article VIII.B and Article VIII.F because the Settlement Agreement was entered into between the parties eighty four days after the May 22, 2020 Petition Date, on August 14, 2022. Accordingly, there is no dispute for the bankruptcy court to resolve. Finally, Plaintiff is entitled to summary judgment on his breach of contract claim against ESIS, Inc. and Hertz because: (1) Gonzalez and Hertz and ESIS (through their attorneys) entered into the August 14, 2020 Settlement Agreement, requiring Gonzalez to release his personal injury claim against Hertz and ESIS in exchange for consideration in the amount of \$640,000.00; (2) Hertz and ESIS breached the Settlement Agreement by refusing to pay Gonzalez the \$640,000; and (3) the breach damaged Gonzalez in the amount of \$640,000.

25 Defendants respond with the following. As ESIS, Inc. is alleged to have acted in concert
26 with Hertz, the Confirmation Order applies to it given that the instant dispute arises from and
27 relates to the Plan. Next, there is no valid contract as Hertz, as the reorganized debtor in the Plan,
28 was not a party to or signed the alleged Settlement Agreement. Finally, even if Hertz did attempt

1 to enter a Settlement Agreement during the pendency of the Bankruptcy Proceeding, Bankruptcy
 2 Court approval would have been needed for such an agreement under section 363(b) of the
 3 Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019. Northview Motors, Inc. v.
 4 Chrysler Motors Corp., 186 F.3d 346, 350 (3d Cir. 1999). Here, neither of the parties to the alleged
 5 Settlement Agreement sought or got such approval.

6 “[I]t is well recognized that a bankruptcy court has the power to interpret and enforce its
 7 own orders.” In re Wilshire Courtyard, 729 F.3d 1279, 1289 (9th Cir. 2013). Where there is a
 8 “close nexus” between the bankruptcy proceeding and post-confirmation litigation, such that the
 9 claims regarding post-confirmation conduct “would likely require interpretation of the [confirmed
 10 plan]” or would “affect the implementation of [an] as-yet-unconsummated plan,” the bankruptcy
 11 court retains “related to” jurisdiction over allegations of such conduct. Id. at 1287 (citation and
 12 quotation marks omitted). The “close nexus” test is therefore satisfied when a civil proceeding is
 13 based upon conduct that “affect[s] the interpretation, implementation, consummation, execution,
 14 or administration of [a] confirmed plan.” Id. at 1288 (citation omitted).

15 The bankruptcy court has “related to” jurisdiction in the first instance over the underlying
 16 facts regarding the breach of contract claim, as the claim depends upon the interpretation of the
 17 bankruptcy court’s order on the confirmed Plan. See id. at 1290 (“Interpretation of the Plan and
 18 Confirmation Order is the only way for a court to determine the essential character of the
 19 negotiated Plan transactions in a way that reflects the deal the parties struck in chapter 11
 20 proceedings. Under [prior Supreme Court case law], this is reason enough for the bankruptcy court
 21 to exercise jurisdiction in this case.” (citations omitted)).

22 The Court finds that the bankruptcy court has “related to” jurisdiction in the first instance
 23 over the underlying facts regarding the breach of contract claim, as the claim depends upon the
 24 interpretation of the bankruptcy court’s order on the confirmed Plan. The parties dispute whether
 25 the Confirmation Order and the Plan provide this Court with jurisdiction to decide Plaintiff and
 26 Intervenor Plaintiff’s breach of contract claim against Defendants ESIS, Inc. and Hertz. They
 27 dispute, specifically, the effect of “Article V.F. Contracts and Leases Entered into After the
 28 Petition Date of the Plan on both Article VIII.B and Article VIII.F of the Plan, including whether

1 Article V.F. is an exception that applies or divests the Bankruptcy Court's jurisdiction of
2 interpreting or enforcing, or both, the Settlement Agreement. Additionally, the parties dispute
3 whether ESIS, Inc. and Hertz even entered the Settlement Agreement or rescinded their offer and
4 the effect this would have on this Court's jurisdiction to decide the breach of contract claim.
5 Further, there is a dispute as to whether ESIS, Inc. is even subject to the Confirmation Order and
6 the Plan. Accordingly, the Court finds that the bankruptcy court, rather than this Court, is the
7 proper court to enter an order addressing these disputes.

8 Therefore, the Court dismisses Plaintiff Fernandez Gonzalez's Third Cause of Action
9 against Defendants ESIS, Inc. and Hertz without prejudice and grants Plaintiff leave to refile this
10 claim if the bankruptcy court concludes that this Court has jurisdiction to decide this claim.

11 **IV. CONCLUSION**

12 **IT IS ORDERED** that Defendant Katherin Valdes Garcia's First MOTION for Summary
13 Judgment (ECF No. 86) is DENIED.

14 **IT IS FURTHER ORDERED** Intervenor Plaintiff Jorge Hernandez Roque's MOTION
15 to Extend Time (First Request) (ECF No. 88) is GRANTED nunc pro tunc.

16 **IT IS FURTHER ORDERED** that Defendants ESIS, Inc. and Hertz Corporation's
17 MOTION for Summary Judgment, (ECF No. 99) is GRANTED without prejudice. Specifically,
18 the Court grants Defendants summary judgment as to Plaintiff Julio Fernandez Gonzalez's Third
19 Cause of Action for breach of contract without prejudice. The Court grants Plaintiff leave to refile
20 the claim against Defendant Hertz and ESIS, Inc., if the bankruptcy court concludes that this Court
21 has jurisdiction to decide this claim.

22 **IT IS FURTHER ORDERED** that Plaintiff Julio Fernandez Gonzalez's Counter
23 MOTION for Summary Judgment, (ECF No. 102) is DENIED without prejudice.

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25 **DATED:** March 14, 2023

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE